

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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|---|---|----------------------------|
| Gary B. Nelson |) | C/A No.: 3:14-3400-JFA-PJG |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| Lewis King Cutter; and The State of South |) | |
| Carolina, |) | |
| |) | |
| Defendants. |) | |
| |) | |

The *pro se* plaintiff, Gary B. Nelson, is an inmate with the South Carolina Department of Corrections. He brings this action pursuant to 42 U.S.C. § 1983 alleging that his former defense attorney withheld information from the state court resulting in the defendant being tried and found guilty in his absence.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that the court should summarily dismiss this action without prejudice. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation and without a hearing.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on October 15, 2014. The plaintiff

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

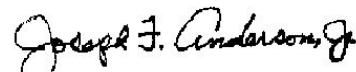
has not filed objections and the time within which to do so has expired. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

The Magistrate Judge correctly notes that an attorney, whether retained or appointed, does not act under color of state law when performing traditional functions as counsel. Further, the Magistrate Judge opines that any action against the State of South Carolina, who has not consented to this action, is barred under Eleventh Amendment immunity.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds that the Magistrate Judge's recommendation is proper and incorporates it herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

November 10, 2014
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge